

## **REMARKS**

This Amendment is in response to the Office Action mailed August 3, 2007. Applicant has amended claims 1-3, 5 and 17 and has added claim 21. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

### ***Rejection Under 35 U.S.C. § 102***

Claims 1, 3, 5 and 6 were rejected under 35 U.S.C. §102(e) as being anticipated by Di Benedetto (U.S. Patent No. 7,061,858). Applicants respectfully disagree and traverse the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

Herein, with respect to independent claim 1, Di Benedetto does not describe the operation for exchanging messages between the aggregation devices to ensure that each of these devices is RSMILT enabled and synchronizing forwarding records of local routing instances for Internet Protocol (IP) networking between the at least two aggregation devices, where the forwarding records are media access control (MAC) records. In fact, Applicant further points out that col. 1, lines 58-59 of Di Benedetto is directed to Layer 2 (L2) communications, and not with L3 communications as highlighted in the Background section of the subject application and now identified in amended claim 2.

While Applicants respectfully traverse the rejection because a *prima facie* case of anticipation has not been established for the subject matter contained in claim 3, 5 and 6, Applicants respectfully believe that such discussion is moot based on the allowability of these claims based on its dependency on independent claim 1. Applicants reserve the right to raise arguments against the rejections if an appeal is warranted.

Hence, Applicants respectfully request that the Examiner withdraw the outstanding §102(e) rejection.

### ***Rejection Under 35 U.S.C. § 103***

Claims 2 and 7-13 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Di Benedetto in view of Liu (U.S. Patent No. 7,197,650). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a

reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the combined teachings of the cited references fail to describe or suggest all of the claim limitations.

Herein, the limitations of original claim 2 have been incorporated into pending claim 1. Applicants incorporate the arguments set forth above. In addition, Applicants respectfully submit that claim 2 has been amended to identify that the claimed method provides sub-second (i.e., less than one second of time) failover if one of the at least two aggregation devices fail and these devices are operating as part of a Layer 3 (L3) network.

In addition, with respect to independent claim 9, none of the cited references, alone or in combination, describe or suggest a second aggregation device that obtain the first set of MAC records [from the first aggregation device] for Layer 3 (L3) networking protocol usage. In fact, Di Benedetto appears to be directed to L2 communications, and thus, any combined teaching should be directed to L2 networking protocols in lieu of L3 networking protocols.

Moreover, neither Di Benedetto nor Liu, alone or in combination, describe or suggest a first aggregation device that informs the second aggregation device that it is *routed split multilink trunking (RSMLT) enabled by issuing a first message to begin synchronization of the first and second sets of MAC records* contained by the first and second aggregation devices. Emphasis added. Although the Office Action listed that Liu provides such teachings (col. 1, lines 17-21 & col. 8, lines 44-58), Applicants respectfully disagree and contend that these sections do not supply such teachings. In order to facilitate prosecution of the subject application, Applicants respectfully request the Examiner to withdraw the rejection or to clearly identify the nature of such teachings.

While Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established for the subject matter contained in claims 7-8 10-12, Applicants respectfully believe that such discussion is moot based on the allowability of these claims based on their dependency on independent claims 1 & 9. Applicants reserve the right to raise arguments against the rejections if an appeal is warranted.

Therefore, Applicants respectfully request that the Examiner withdraw this outstanding rejection of claims 2 and 7-13 under 35 U.S.C. §103(a).

Claims 14-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Di Benedetto in view of Liu and Goodwin (U.S. Patent publication No. 2002/0124107). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. While Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established for the subject matter contained in claims 14-18, Applicants respectfully believe that such discussion is moot based on the allowability of these claims based on its dependency on independent claim 9. Applicants reserve the right to raise arguments against the rejections if an appeal is warranted.

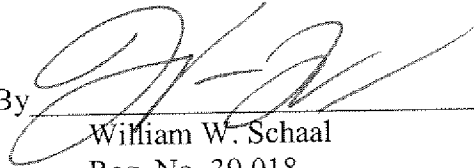
***Conclusion***

Applicants reserve all rights with respect to the applicability of the doctrine of equivalents. Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,  
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By



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